

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KELLY GENE GETTLING,

Petitioner,

No. 06:11-cv-01176-AC

v.

BRIAN BELLEQUE, Oregon State
Penitentiary Superintendent,

Respondent.

ORDER

HERNANDEZ, District Judge:

Magistrate Judge Acosta issued a Findings & Recommendation (#50) on November 26, 2013, in which he recommends the Court deny Petitioner's Second Amended Petition for Writ of Habeas Corpus. Petitioner has timely filed objections to the Findings & Recommendation. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings & Recommendation, the district court must make a *de novo* determination of that portion of the

Magistrate Judge's report. 28 U.S.C. § 636(b)(1); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).


I have carefully considered Petitioner's objections and conclude there is no basis to modify the Findings & Recommendation other than to allow to allow a Certificate of Appealability as to certain issues under 28 U.S.C. § 2253(c)(2). I have also reviewed the pertinent portions of the record *de novo* and find no other errors in the Magistrate Judge's Findings & Recommendation.

CONCLUSION

The Court ADOPTS in part Magistrate Judge Acosta's Findings & Recommendation [#50], and therefore, Petitioner's Second Amended Petition for Writ of Habeas Corpus [#17] is denied, but a Certificate of Appealability as further specified in the Judgment, is allowed.

IT IS SO ORDERED.

DATED this 11 day of Feb, 2014.


MARCO A. HERNANDEZ
United States District Judge